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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. CARLOS NICHOLAS THOMAS, Defendant and Appellant.	B183937 (Los Angeles County Super. Ct. No. SA043366)

APPEAL from a judgment of the Superior Court of Los Angeles County. Keith L. Schwartz, Judge. Affirmed.

John Steinberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Ana R. Duarte and Thomas C. Hsieh, Deputy Attorneys General, for Plaintiff and Respondent.

The jury found defendant Carlos Nicholas Thomas guilty of the second degree murder of Antwon "Moe Dog" Jones in violation of Penal Code section 187, subdivision (a).[1] The jury found firearm use allegations true, including a finding that defendant killed Jones by personally and intentionally discharging a firearm within the meaning of section 12022.53, subdivision (d). It also found defendant committed the murder for the benefit of a criminal street gang under section 186.22, subdivision (b)(4). The trial court sentenced defendant to state prison for15 years to life for the murder, with a consecutive term of 25 years to life for the firearm enhancement.

Defendant timely appeals, raising four contentions: (1) The trial court erred in refusing to bifurcate trial of the criminal street gang allegation, resulting in a violation of his federal constitutional right to due process; (2) the trial court prejudicially erred in refusing to admit evidence that prosecution witness King Solomon Rowe had suffered a misdemeanor conviction for giving false information to a peace officer under Vehicle Code section 31; (3) the trial court violated defendant's federal constitutional rights to confrontation and to present a defense by limiting the scope of defendant's cross-examination of the prosecution's gang expert; and (4) those three alleged errors, if not sufficient individually to require reversal, combined to amount to cumulative, prejudicial error. We disagree and affirm.

STATEMENT OF FACTS

The prosecution presented evidence that on April 24, 2001, Charles "Whack" Twinn was working as an engineer and producer at a music studio located on Robertson Boulevard at the southern border of Beverly Hills. Twinn was a childhood neighbor and acquaintance of the victim, Antwon "Moe Dog" Jones, who arrived at the studio that night to record rap music. In addition to recording rap music, Jones was a member of the

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[1] All further statutory references are to the Penal Code, unless otherwise indicated.

Venice Shoreline Crips street gang. Jones had a Venice Shoreline tattoo on his forearm. He also had "MOE DOG" tattooed on his upper arm. Twinn was not a gang member.[2]

At approximately 10:00 or 11:00 p.m., Jones asked Twinn to take him to a store to buy some liquor and cigars. Twinn reluctantly agreed and drove Jones to a nearby liquor store on Olympic Boulevard, but they found it had already closed. As Twinn drove Jones back to the studio, Jones suggested they go to another liquor store, a few miles south on La Cienega Boulevard. As they approached the store, Jones told Twinn they "were slipping." Twinn understood that phrase as meaning that they had crossed into an area where they should not be. In gang parlance, "slipping" means making a mistake. The store was located within the territory of the Playboy Gangster Crips, who were rivals of the Venice Shoreline Crips.

Twinn pulled the car into the store's parking lot, and he and Jones went inside. While Jones shopped, Twinn went outside to smoke. Twinn went back inside for a lighter as Jones was completing his purchases of brandy, cigars, and ice.

In the meantime, defendant had entered the store with a woman. Defendant was a Playboy Gangster. Defendant and Jones had a history, as they had attended the same middle school in Venice, which was located in Venice Shoreline territory. Jones would hang out with students from the Venice area; defendant would hang out with students who had been bussed from Playboy Gangster territory. Jones and defendant had a fistfight on the middle school campus during lunchtime. The teachers broke up the fight, but there was no apology or handshake between them.

As Jones passed defendant on his way toward the liquor store's exit, defendant said "fuck that" or "fuck this" to Jones. Jones turned around, threw up his hands, and said, "This is baby Moe Dog" in a confrontational manner. Twinn told Jones they should leave, and they walked to the parking lot. As Twinn hurried to the car, Jones hesitated by the store, saying, "Man, can you believe that fool?"

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[2] Twinn denied having a gang moniker; he said that "Whack" was his rap music name.

Twinn looked back at Jones and heard gunshots. Twinn saw Jones begin to run northbound on La Cienega Boulevard. Twinn immediately ran in the opposite direction. He heard approximately four gunshots and a female voice scream, "no" or "stop." A woman named Donetta Madison happened to be standing by a pay phone near the liquor store. She heard a male voice yell, "Playboy Gangster Crips," and a second male voice yell, "Venice Shoreline Crips."

At the same time as Jones and Twinn were leaving the store, Jose Michelot was driving south on La Cienega Boulevard. As he approached the liquor store, he saw Jones and Twinn leaving the store and walking toward a car parked in the adjacent lot.[3] Defendant ran after them, grabbed a gun from under his shirt, and began shooting in their direction. Defendant chased Jones, who was running away northbound on La Cienega Boulevard. Defendant continued to shoot at the retreating Jones. Twinn escaped, climbing over two gates. He asked some residents to call the police.

Jones's body was found in an alley close to the liquor store. Jones had suffered a single, fatal bullet wound to his back. There were seven nine-millimeter bullet casings on the ground nearby, along with a bag of melting ice, a box of cigars, and a pager. The trail of blood leading to Jones's body indicated that he had dropped the packages and continued to run for a few feet after he had been shot.

On the morning of April 25, 2001, King Solomon Rowe and defendant were together in a class at Santa Monica Community Educational Center taught by Lance Swedlund. Rowe overheard defendant's conversation with a few other classmates, who were members of various gangs. In a light-hearted manner, defendant boasted that "he peeled someone's cap from Venice," street vernacular for doing "something bad," even killing someone. When Rowe later found out that Jones had been killed, he told Jones's

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3 Michelot did not identify Jons and Twinn, but in keeping with the standard of appellate review, we make the reasonabvle inference that they were the two young males Michelot observed.

cousin and mother what he had overheard. The following day, Rowe told his teacher what defendant had said in class. Swedlund said he would inform the police.[4]

Rowe was acquainted with both defendant and Jones, having grown up in Venice and attended middle school with them. At that time, defendant was associated with the Playboy Gangsters. Rowe also knew Jones from the neighborhood; Jones had friends in a Venice-based gang. Rowe admitted to a 2004 felony conviction for driving another person's vehicle without permission in violation of Vehicle Code section 10851. On cross-examination, Rowe denied being a member of any gang. However, it was stipulated that on August 16, 2004, during an argument with a relative, he said: "I will bring back my gang and fuck you up."

That afternoon, Officer Erik Schick was on bicycle patrol in the area of the Jones murder, which was Playboy Gangster territory. Officer Schick recognized defendant as matching the suspect's description. Defendant was in the courtyard of an apartment building a few blocks from the murder scene. When defendant saw a marked police patrol car, he turned and walked away from it—toward Officer Schick. When defendant saw Officer Schick, he immediately turned and ran away. The officer gave chase, but lost sight of defendant and called for backup support. Defendant tried to elude another officer in a marked patrol car and ran back to the courtyard where Officer Schick had first seen him. Officer Schick and his partner ran after defendant, who ignored the officers' repeated demands to stop. With the assistance of other officers, defendant was finally arrested. A booking search revealed two Playboy Gangster tattoos—a Playboy bunny and the initials, "P.B.G." Defendant was known to the police as a Playboy Gangster.

Detective Erik Saidenberg testified as a gang expert. Playboy Gangster territory was from Robertson Boulevard on the west to La Cienega Boulevard on the east and

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[4] Swedlund testified that on April 25, he noticed defendant talking to a group of other male classmates. Rowe was seated behind the group. Defendant appeared to be the focus of attention. At one point, a member of the group made a gesture simulating a gunshot to the head. Contrary to Rowe's testimony, Swedlund did not hear what defendant was saying. Swedlund had no information that Rowe was a gang member. Swedlund called the police after Rowe spoke to him about the conversation.

from Pico Boulevard on the north to the 10 Freeway on the south. The gang's primary area included the location where defendant was first sighted by Officer Schick. The Playboy Gangsters primarily engage in narcotic sales and street robberies. Detective Saidenberg presented evidence that three Playboy Gangsters had been convicted of felonies—one for attempted voluntary manslaughter, another for multiple assaults with a deadly weapon, and another for attempted murder. From his own contacts with defendant, and from police records, the detective opined that defendant was a Playboy Gangster.

In response to a hypothetical set of facts consistent with the prosecution's evidence concerning the Jones shooting, Detective Saidenberg opined that Jones's statement identifying himself as "Moe Dog" to defendant was an act of defiance or disrespect directed at defendant and the Playboy Gangsters. Evidence that Jones and defendant yelled out their respective gang affiliations before the shooting indicated that the killing was a gang confrontation, committed for the benefit of the Playboy Gangsters.

Defendant presented an alibi defense. His mother, Gloria Thomas, testified that defendant was living at her Palms apartment on the day of the Jones shooting. He left the apartment early that morning to attend classes, wearing his school uniform—black pants and white T-shirt. Defendant returned home for the night at approximately 9:15 p.m., before his 10:00 p.m. curfew. In rebuttal, one of the detectives who took part in the search of Thomas's apartment disputed her testimony that she had told the police about defendant's alibi at the time of the search.

DISCUSSION

Defendant Forfeited His Bifurcation Challenge by Failing to Raise it Below; the Challenge Also Fails on its Merits

Defendant contends the trial court's denial of his bifurcation motion violated his federal constitutional right to due process. In essence, he argues the trial court

misunderstood the scope of its discretion and denied his motion to bifurcate on the erroneous belief that the prosecution had the "absolute right" to present evidence of defendant's gang affiliation and involvement during the prosecution's case-in-chief. Our reading of the record, however, does not support that contention. We find that the trial court reasonably exercised its discretion in denying the motion. More fundamentally, defendant forfeited his appellate claim by failing to object below. Defendant's bifurcation motion was raised solely at his first trial, which ended in a mistrial after the trial court found the jury hopelessly deadlocked. Despite having the opportunity to do so, defendant did not renew the motion at the second trial, on which this appeal is based.

At the start of defendant's first trial, defense counsel sought to prevent the prosecutor from mentioning during opening statement defendant's gang affiliation and involvement. When the trial court pointed out that its reading of the charges to the jury would include the section 186.22 criminal street gang allegation, defense counsel requested that the court defer doing so and "bifurcate" that issue. Defense counsel did not mention or imply any due process component to its bifurcation request. Counsel argued that until the prosecution presented "some evidence" of gang affiliation and involvement, there would be a risk of inflaming the jury's anti-gang passions and prejudices against defendant. The prosecution opposed that request, arguing that the gang evidence was properly admissible in defendant's case-in-chief because it was relevant to prove motive, malice, intent, and premeditation. In addition, as an offer of proof, the prosecutor pointed out that the gang expert to be called at trial had opined at the preliminary hearing that defendant was a gang member and that the murder was committed for the benefit of his gang.

In the course of denying defendant's bifurcation motion, the trial court noted that the relevant case law permitted admission of gang testimony in the prosecution's case-in-chief "when relevant and probative." The trial court also confirmed that the preliminary hearing testimony was consistent with the prosecutor's offer of proof in that there was evidence the killing was gang-motivated. In addition, the trial court was concerned that bifurcation of the gang allegation would compromise the parties' and the court's efforts

to conduct the kind of voir dire that would ensure exclusion of jurors who had gang biases. Under the circumstances, the court found it would be "an abuse of my discretion" to grant the bifurcation motion.

At the start of the second trial, before the same judge who presided over the first trial, there was no defense motion to bifurcate or otherwise limit the prosecution's evidence of gang affiliation and involvement. To the contrary, when the trial court asked the defense whether there was any objection to reading of the section 186.22 gang allegation to the jury, defense counsel said, "No, your Honor."

Defendant therefore failed to preserve the bifurcation issue for appellate review. Appellate claims based on the admission of evidence must be timely and specifically asserted at trial or they are waived. (Evid. Code, § 353; *United States v. Olano* (1993) 507 U.S. 725, 731; see, e.g., *People v. Burgener* (2003) 29 Cal.4th 833, 869 [confrontation clause]; see also *People v. Garceau* (1993) 6 Cal.4th 140, 173, overruled on another point in *People v. Yeoman* (2003) 31 Cal.4th 93, 117-118.) "Specificity is required both to enable the court to make an informed ruling on the motion or objection and to enable the party proffering the evidence to cure the defect in the evidence." (*People v. Mattson* (1990) 50 Cal.3d 826, 854, superseded by statute on another ground in *People v. Jennings* (1991) 53 Cal.3d 334, 387, fn. 13.)

Defendant seeks to avoid forfeiture by arguing that it would have been futile to raise the same objection that the same judge had previously rejected. Not so. Far from any indication that the trial court's mind was irrevocably made up on the issue of bifurcation, the record shows that it gave the defense the specific opportunity to renew the motion. Moreover, the fact that the parties and the trial court had seen how the evidence had played out in the first trial gave the defense the best possible basis either for renewing or eschewing the bifurcation motion. Here, of course, defense counsel knew that the prosecution had presented substantial evidence that the killing was gang-motivated—including evidence that the victim had knowingly strayed into rival gang territory and that defendant and the victim yelled out their respective affiliations just prior to the shooting. It would have been apparent to counsel that evidence of defendant's

gang affiliation was thoroughly intertwined with the prosecution's case-in-chief. By declining the trial court's invitation to renew his bifurcation motion, defendant forfeited his appellate claim.

In any event, the claim fails on its merits. Section 186.22, subdivision (b)(1) provides an enhanced sentence for "any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members . . . ." In *People v. Hernandez* (2004) 33 Cal.4th 1040 (*Hernandez*) our Supreme Court held that a gang enhancement may be bifurcated from the guilt phase of trial in the discretion of the trial court. (*Id.* at p. 1048.) The legal basis for bifurcation of a prior conviction allegation also permits bifurcation of the gang allegation. (*Id.* at p. 1049.) However, "the criminal street gang enhancement is attached to the charged offense and is, by definition, inextricably intertwined with that offense. So less need for bifurcation generally exists with the gang enhancement than with a prior conviction allegation." (*Id.* at p. 1048.)

Evidence of gang membership is often relevant to, and admissible regarding, the charged offense. Gang evidence may be relevant to "identity, motive, modus operandi, specific intent, means of applying force or fear, or other issues pertinent to guilt of the charged crime." (*Hernandez, supra,* 33 Cal.4th at p. 1049.) "To the extent the evidence supporting the gang enhancement would be admissible at a trial of guilt, any inference of prejudice would be dispelled, and bifurcation would not be necessary." (*Id.* at pp. 1049-1050.) However, "[e]ven if some of the evidence offered to prove the gang enhancement would be inadmissible at a trial of the substantive crime itself—for example, if some of it might be excluded under Evidence Code section 352 as unduly prejudicial when no gang enhancement is charged—a court may still deny bifurcation." (*Id.* at p. 1050.)

Accordingly, a trial court's discretion to deny a bifurcation motion is broader than its discretion to admit gang evidence when the gang allegation is not charged. (*Hernandez, supra,* 33 Cal.4th at p. 1050.) Bifurcation is appropriate when the evidence admitted solely to prove the gang allegation is so minimally probative on the charged offense, and so

inflammatory in comparison, that it threatens to sway the jury to convict regardless of actual guilt. (*Id.* at p. 1051.) The defendant has the burden of clearly establishing a substantial danger of prejudice requiring bifurcation. (*Ibid.*) Defendant failed to carry that burden. As the trial court understood, the issues of defendant's gang affiliation and involvement were inextricably intertwined with the murder charge. None of the gang evidence was tangential as to the murder charge; nor was any particularly inflammatory—and certainly not the evidence of defendant's gang tattoos. After all, defendant's victim had similar tattoos. As such, the trial court's ruling was well within its discretion.

Defendant's appellate invocation of the due process clause is similarly lacking in merit. Leaving aside the fact that it was not fairly presented below, we can discern nothing in defendant's argument that implicates the federal Constitution. Appellant points to the trial court's statements that the prosecution had an "absolute right" to present the gang evidence as demonstrating an erroneous belief it lacked any discretion to grant the bifurcation motion. Read in context, however, it is clear that the court was aware of its discretion, but was merely (and accurately) emphasizing the magnitude of the concerns weighing against bifurcation.

The Trial Court Acted Within its Discretion in Refusing to Permit the Impeachment of Prosecution Witness Rowe With Evidence of His Misdemeanor Vehicle Code Conviction

Defendant contends the trial court prejudicially erred in refusing to admit evidence that prosecution witness Rowe had suffered a misdemeanor conviction for giving false information to a peace officer under Vehicle Code section 31.[5] We disagree.

The defense moved to impeach Rowe with the conduct underlying his 2004 misdemeanor conviction. In a hearing outside the jury's presence, Rowe testified that he had presented a fake identification card to the police: The card was not issued by the

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[5] No person shall give, either orally or in writing, information to a peace officer while in the performance of his duties under the provisions of this code when such person knows that the information is false." (Veh. Code, § 31.)

Department of Motor Vehicles, but all the information on it was true. The trial court ruled that it would not permit such impeachment because the information on the card was correct. Had Rowe attempted to deceive the police as to his identity, the court explained, it would have ruled differently. "[A]t best, it is a technical violation." In addition, given that evidence of Rowe's felony conviction for driving another person's vehicle without permission in violation of Vehicle Code section 10851 was admissible for impeachment, the trial court denied defendant's motion.

The governing law is well established. "Any felony conviction necessarily involving moral turpitude may be used to impeach a witness at a criminal proceeding. (Cal. Const., art. I, § 28, subd. (f); *People v. Castro* (1985) 38 Cal.3d 301, 306.) The admissibility of such a conviction rests with the trial court's discretion. (*Castro*, at p. 306.)" (*People v. Maestas* (2005) 132 Cal.App.4th 1552, 1556.) As our Supreme Court recently explained, "a trial court's broad latitude in this respect will not be upset on appeal absent a showing of abuse of discretion." (*People v. Robinson* (2005) 37 Cal.4th 592, 626.) "If a felony conviction does not necessarily involve moral turpitude, it is inadmissible for impeachment as a matter of law. [Citation.] Whether an offense constitutes a crime of moral turpitude is a question of law." (*People v. Maestas, supra,* 132 Cal.App.4th at p. 1556.)

Defendant argues that the trial court erroneously ruled that Rowe's Vehicle Code section 31 conviction was not a crime of moral turpitude as a matter of law, pointing to a statement by the trial court that "[t]here was no intent to deceive." In context, however, it is clear that the trial court was commenting on the degree of deception, not making a legal determination that the conduct did not amount to moral turpitude. Moreover, even if Rowe's conduct is understood as amounting to moral turpitude, there was no abuse of discretion in preventing the defense from impeaching Rowe with it.[6] As the trial court

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6 We note that defendant's reliance on In re Ivan J. (2001) 88 Cal.App.4th 27, 31-32, for the proposition that Rowe's conduct necessarily amounted to moral turpitude, is misplaced. There, the court held that a Vehicle Code section 148.9, subdivision (a) conviction was supported by evidence that the defendant "gave a false date of birth so the

found, the degree of deception was relatively low. In addition, it amounted to conduct unrelated to the subject of Rowe's testimony. Finally, given the admission of Rowe's felony conviction for impeachment purposes, the misdemeanor conduct would have been of minimal probative value. In light of the extremely strong evidence of defendant's guilt supported by the two eyewitness identifications, the corroborative physical evidence at the crime scene and defendant's flight, any error would have been harmless under both *People v. Watson* (1956) 46 Cal.2d 818, 836 and *Chapman v. California* (1967) 386 U.S. 18, 23.

The Trial Court's Reasonable Limitation on the Gang Expert's Cross-Examination Did Not Violate Defendant's Constitutional Right to Confront the Witnesses Against Him

Defendant contends the trial court's limitations on the scope of his cross-examination of the prosecution's gang expert violated his rights under the Sixth Amendment's confrontation clause. More specifically, defendant argues that by restricting his questioning on the expert's knowledge of whether the proceeds from drug sales by street gangs were funneled into the rap music industry, the trial court prevented him from establishing that Twinn was a gang member with a motive to falsely identify a rival gang member as Jones's killer. We disagree. The trial court merely exercised its broad discretion to preclude cross-examination that had become repetitive and unlikely to uncover relevant evidence.

Moreover, far from preventing defendant from presenting his defense, no significant restrictions were placed on defendant's examination of Twinn as to his potential gang membership. Twinn had been thoroughly examined as to his moniker and relationships with Jones and other Venice Shoreline members. Defense counsel's

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deputy would believe he was 18 years old and could legally possess tobacco." (*Ibid*.) That was precisely the same type of conduct, absent here, that the trial court indicated would warrant admission for impeachment purposes.

recross-examination of Detective Saidenberg adduced the expert's acknowledgement that Twinn's moniker and his association with Venice Shoreline member Jones raised the expert's suspicion as to Twinn's gang membership.

On further redirect examination, the prosecutor asked the detective whether he was "familiar at all with the rap music industry?" Detective Saidenberg said, "[s]omewhat." Based on that reply, the prosecutor asked if the detective believed that everyone in the rap industry who has a moniker is associated with a street gang. The detective answered, "[n]ot necessarily." On further recross-examination, defense counsel asked: "Isn't it true that, based on your tracking of gangs, that, on many occasions, the money raised by the sale of drugs by gangs is put into the . . . rap music business?" The prosecutor objected on the ground that there was no foundation for the inquiry. The trial court sustained the objection. When defense counsel argued that the witness's self-proclaimed gang expertise supported the inquiry, the trial court replied (in to jury's presence): "Yeah, but we are getting really far afield here. And I think the jury has heard plenty on this area, and I don't think we need to go into it any further. So if there is something specific you want to ask; otherwise, this officer is going to be excused . . . subject to recall." The trial court ordered defense counsel to move onto his next question. Defense counsel then established that Detective Saidenberg had received no training as to rap music; his testimony was based on "other experiences."[7]

Thus, the record shows that defense questioning as to a drug proceeds/rap music connection would have done little, if anything, to strengthen an inference as to Twinn's gang membership. Indeed, defendant's examination established that the expert had no training as to the relation between street gangs and rap music. As the trial court reasonably found, that area of inquiry had become repetitive and of minimal relevance. It follows that the trial court's reasonable limitations on cross-examination entailed no Sixth Amendment violation.

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[7] As the Attorney General points out, nothing in the trial court's ruling prevented the defense from calling its own expert to establish the desired connection between gang drug proceeds and rap music.

As the Supreme Court has explained, the Confrontation Clause of the Sixth Amendment does not prevent a trial judge from imposing any limits on defense counsel's inquiry into the potential bias of a prosecution witness. "On the contrary, trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, . . . interrogation that is repetitive or only marginally relevant. And as we observed . . . 'the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." (*Delaware v. Van Arsdall* (1986) 475 U.S. 673, 679, quoting *Delaware v. Fensterer* (1985) 474 U.S. 15, 20 (*per curiam*); accord, *People v. Jennings* (1991) 53 Cal.3d 334, 372 [trial court may limit impeachment evidence that has only slight relevancy to the issues presented].)

Here, the trial court accorded the defense the opportunity for effective cross-examination of Detective Saidenberg; its limitation on questioning as to a possible link between gang money and rap music was reasonable in light of the expert's lack of reliable knowledge of that subject and the marginal relevance such questioning bore to Twinn's possible gang membership. For similar reasons, any error would have been harmless beyond a reasonable doubt. A reasonable jury would not have received a significantly different impression of Twinn's—or of Detective Saidenberg's—credibility had defendant's counsel been permitted to pursue his proposed line of cross-examination. (*Delaware v. Van Arsdall*, *supra*, 475 U.S. at p. 680.)

There Was No Cumulative Error

Finally, defendant contends the combination of alleged constitutional violations and trial court errors addressed above resulted in a miscarriage of justice and rendered his trial fundamentally unfair. Having rejected each of those appellate challenges, we are compelled to find no merit to this contention. This was not a case in which trial errors

that were nonprejudicial singularly, combined to deprive defendant of due process or a fair trial. (See *People v. Box* (2000) 23 Cal.4th 1153, 1219.)

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

MOSK, J.